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REPORT
98-883

AVIATION DRUG-TRAFFICKING CONTROL ACT

JUNE 29, 1984.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. HOWARD, from the Committee on Public Works and Transportation, submitted the following

REPORT

[To accompany H.R. 1580]

[Including cost estimate of the Congressional Budget Office]

The Committee on Public Works and Transportation, to whom was referred the bill (H.R. 1580) to amend the Federal Aviation Act of 1958 to provide for the revocation of airman certificates and for additional penalties for the transportation by aircraft of controlled substances, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

The reported bill will help combat the use of aircraft in illegal drug trafficking, one of the most serious problems facing the nation.

Intelligence estimates presented at hearings held by the Aviation Subcommittee established the importance of aviation to drug trafficing. 77 percent of cocaine entering the country does so by air; 41 percent by private aircraft, and 35 percent by commercial aircraft. 60 percent of the heroin from Southeast Asia and 53 percent from Southwest Asia enter the United States by air, primarily by commercial aviation. Overall, it is estimated that 1.3 million pounds of illegal drugs entered the United States by private aircraft in 1983.

Although aircraft play an important role in drug trafficking, the aviation laws do little do discourage these illegal operations. In many cases an airman or aircraft owner who participates in illegal drug trafficking is subject to relatively minimal sanctions against his or her aviation licenses, such as a $1,000 civil penalty, or sus-

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pension of his or her license for a year. The reported bill increases the aviation-related penalties against aircraft owners and airmen participating in drug trafficking. Of course, these offenders will continue to be subject to the general penalties of the drug laws.

Current law includes no specific provisions dealing with airmen who operate aircraft in connection with illegal drug transactions. FAA's policy has been to revoke the certificate of an airman who is convicted of a drug violation involving use of an aircraft. The airman may apply for a new certificate after 1 year.

The reported bill provides that an airman's certificate must be revoked if the airman is convicted of a drug violation—other than simple possession [1]—by a State or Federal court and if the FAA Administrator determines that the airman served as an airman or was on board the aircraft in connection with the violation. Similarly, an airman's certificate must be revoked if the Administrator finds that the airman knowingly served as an airman or was on board the aircraft in connection with an act prohibited by State or Federal drug law, whether or not there was a conviction. The above revocations are for five years, except as noted below.

The reported bill protects the airman's procedural rights. Before revocation, the airman must receive an evidentiary hearing, and standard judicial review procedures are also available.

The reported bill provides that the Administrator may reduce the revocation period of 5 years to not less than 1 year if the Administrator finds that a 5-year revocation would be excessive considering the nature of the offense and the burden which revocation places on the airman, or if the Administrator finds that revocation for a full 5 years would not be in the public interest. The Administrator's discretion could be used to encourage airmen to cooperate in the development of evidence against other violators.

If an airman's certificate is revoked for drug trafficking, it is important to deter the airman from continuing to operate without a certificate. The sanctions under current law are not sufficient. An airman who flies without a license is subject only to a $1,000 civil penalty. This is not a significant deterrent for someone willing to run the risk of violating the drug laws. The reported bill establishes penalties of a fine of up to $25,000 and imprisonment of up to 5 years for a person who knowingly and willfully operates without an airman's certificate in connection with violations of State and Federal drug laws.

The reported bill also creates penalties for aircraft owners who knowingly permit their aircraft to be used for illegal drug operations. Under current law, there are no specific provisions permitting revocation of a certificate of aircraft registration when the owner knowingly permits the aircraft to be used for an illegal drug transaction. The reported bill establishes mandatory revocation of all certificates of registration held by an aircraft owner who knowingly permits an aircraft to be used for illegal drug transactions. When revocation has been ordered the owner is prohibited from registering any aircraft for 5 years. As in the case of an airman's certificate, the Administration is given discretion to reduce this to

[1] In all sections of the bill the penalties do not apply to violations involving simple possession only.

1 year, and the aircraft owner is entitled to an evidentiary hearing before the revocation takes places.

A final area covered by the reported bill is the sale or use of fraudulent certificates or fraudulent registration markings on aircraft in connection with illegal drug trafficking. Under current law, use of fraudulent certificates and use of fraudulent registration numbers are punishable by a fine of up to $1,000 and imprisonment of up to 3 years. The reported bill establishes additional offenses of selling fraudulent certificates or possessing such certificates with the intent to use them. The reported bill further provides that when a violation of these provisions takes place in connection with an illegal drug transaction the penalty shall be a fine of up to $25,000 and imprisonment of up to 5 years.

The increased penalties established by the reported bill will not only help deal with the social and economic problems created by illegal drugs, but will also help deal with specific aviation-related concerns. The use of private aircraft in drug smuggling creates many problems for aircraft owners and operators. Drug smuggling flights create safety problems because of the hazardous maneuvers pilots undertake to avoid detection, such as operating without a flight plan and flying at extremely low altitudes. It is estimated that between 1980 and 1982 there were 491 accidents involving aircraft suspected of carrying drugs.

Additionally, many aircraft used in drug smuggling are stolen or rented fraudulently from innocent owners. Between 1980 and 1982 an estimated 280 aircraft were involved in drug related thefts. Many have never been recovered. Other stolen aircraft were recovered only after being involved in an accident or being seized by United States or foreign authorities.

It should be emphasized that the reported bill is not intended to place the primary responsibilites for enforcing the drug laws in FAA. Rather, the drug enforcement agencies, such as Customs and the Drug Enforcement Administration, will continue to have that mandate. However, the authority granted FAA by the reported bill will permit FAA to administer its existing responsibilities to certificate airmen and aircraft in a manner which will make a significant contribution toward our national effort to reduce illegal drug trafficking and to protect innocent airmen from threats to themselves and to their aircraft.

A section-by-section analysis of the bill follows.

Section-by-Section Summary of H.R. 1580

Section 1. Establishes short title of the Act as the "Aviation Drug-Trafficking Control Act."

Section 2. Requires revocation of an airman's certificate if the holder is convicted for violation of any State or Federal law relating to controlled substances (other than a law prohibiting simple possession) and the FAA Administrator determines either that the certificate holder knowingly served as an airman or was on board the aircraft in connection with the violation.

Requires revocation of an airman's certificate if the Administrator determines that the holder knowingly served as an airman or was on board the aircraft in connection with transportation by air-

craft of a controlled substance if such transportation is prohibited by State or Federal law relating to controlled substances (other than a law prohibiting simple possession of a controlled substance).

Before an airman's certificate is revoked under the foregoing provision, the holder must be given notice and an opportunity for a hearing on the record as to why the certificate should not be revoked.

The Administrator has no authority to review the elements of the substantive criminal offense if an individual has been convicted by an appropriate State or Federal court. Conversely, the Administrator may not revoke an airman certificate if the holder thereof has been acquitted of the substantive criminal offense charged.

A person whose certificate is revoked may obtain judicial review under Section 1006 of the Federal Aviation Act.

Section 3. A person whose certificate is revoked under Section 2 may not obtain a new certificate for five years. The Administrator may reduce the five-year period to not less than one year, if the Administrator determines that a five-year revocation would be excessive considering the nature of the offense and the burden which revocation places on the person, or if the Administrator determines that revocation for the full five years would not be in the public interest.

If an airman's certificate is revoked and he is subsequently acquitted of all pending criminal charges against him, the Administrator must reissue his certificate if he meets all appropriate FAA safety regulations.

Section 4. Under current law FAA has authority to revoke a certificate of aircraft registration if the Administrator finds a "cause which renders the aircraft ineligible for registration." Section 4 provides that a certificate of registration must be revoked if the Administrator determines that the owner has knowingly permitted the aircraft to be used to transport a controlled substance, and such transportation violates State or Federal law or is in connection with any act prohibited by State or Federal law relating to controlled substances (other than simple possession). If the aircraft owner is not an individual, the test of knowledge is that a majority of the individuals who control the owner or are involved in forming the major policy of the owner must have the required knowledge. If a certificate of registration is revoked under this provision, the holder of the certificate may not apply for any other certificate of registration for five years. The five years may be reduced to not less than one year under standards similar to those described in Section 3, above. The procedures required for revocation are the same as the procedures described in Section 2, above.

Section 5. Under current aviation law a person who operates an aircraft without an airman's certificate is subject only to a civil penalty of $1,000, even if the aircraft is being used to transport controlled substances illegally (such a person is, of course, also subject to the normal drug law penalties). Section 5 provides that a person who knowingly acts as an airman without a certificate in connection with a violation of State or Federal controlled substance laws (other than simple possession) shall be subject to a fine of up to $25,000 and imprisonment of up to five years.

Section 6. Under current law a person using fraudulent versions of certificates authorized by the Federal Aviation Act or displaying false aircraft registration markings is subject to a fine of up to $1,000 and imprisonment of up to three years. Section 6 adds to the offenses subject to these criminal penalties the offense of selling fraudulent certificates or possessing these certificates with the intent to use them. The Section further provides that if the prohibited acts occur with intent to commit any act prohibited by State or Federal law relating to controlled substances (other than simple possession) the offender shall be subject to a fine of up to $25,000 and imprisonment of up to five years. The same penalty is provided for a person who sells a fraudulent certificate with the knowledge that the purchaser intends to use the certificate in connection with any act prohibited by any State or Federal law relating to controlled substances (other than a law relating to simple possession).

COMMITTEE ACTION AND VOTE

With respect to clause 2(l)(1) (A) and (B) of rule XI of the Rules of the House of Representatives, the Committee, with a majority present, favorably reported, by voice vote, H.R. 1580, on March 29, 1984. Prior to this action and vote, the Subcommittee on Aviation held a hearing on H.R. 1580 on April 27, 1983 (Committee publication 98-112).

With respect to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that no separate hearings were held on the subject matter of the legislation by the Subcommittee on Investigations and Oversight.

With respect to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has not received a report from the Committee on Government Operations pertaining to this subject matter.

CONGRESSIONAL BUDGET ACT REQUIREMENTS

With respect to clause 2(l)(3)(B) of rule XI of the Rules of House of Representatives, and in compliance with section 308(a) of the Congressional Budget Act of 1984, the Committee reports that H.R. 1580 does not provide any new budget authority or new or increased tax expenditures.

With respect to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee has received the following report prepared by the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 2, 1984.

Hon. JAMES J. HOWARD,
Chairman, Committee on Public Works and Transportation,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 1580, the Aviation Drug-Trafficking Control Act, as ordered reported by the House Committee on Public Works and Transportation, March 28, 1984.

This bill amends the Federal Aviation Act of 1958 to provide for the revocation of airman certificates and for additional penalties for the transportation by aircraft of controlled substances as defined by the Controlled Substances Act. The Congressional Budget Office estimates that there will be no significant increased cost to the federal government and no additional costs for state and local governments if this bill is enacted.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER.

INFLATIONARY IMPACT ANALYSIS

With respect to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee reports that there should be no inflationary impact on prices and costs in the operation of the national economy by enactment of H.R. 1580.

COST ESTIMATE OF LEGISLATION

With respect to clause 7(A)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that H.R. 1580 authorizes no funding and that there should be no significant costs incurred by enactment of the bill.

With respect to clause 7(A)(2) of rule XIIII of the Rules of the House of Representatives, the Committee reports that no cost estimate of H.R. 1580 was submitted to the Committee by a government agency.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL AVIATION ACT OF 1958

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TITLE V—NATIONALITY AND OWNERSHIP OF AIRCRAFT

REGISTRATION OF AIRCRAFT NATIONALITY

REGISTRATION REQUIRED

SEC. 501. (a) It shall be unlawful for any person to operate or navigate any aircraft eligible for registration if such aircraft is not registered by its owner as provided in this section, or (except as provided in section 1108 of this Act) to operate or navigate within the United States any aircraft not eligible for registration. *Provided,* That aircraft of the national-defense forces of the United States may be operated and navigated without being so registered if such aircraft are identified, by the agency having jurisdiction over them, in a manner satisfactory to the Administrator. The Administrator may, by regulation, permit the operation and navigation of aircraft without registration by the owner for such reasonable periods after transfer of ownership thereof as the Administrator may prescribe.

ELIGIBILITY FOR REGISTRATION

(b) An aircraft shall be eligible for registration if, but only if—

(1)(A) it is—

(i) owned by a citizen of the United States or by an individual citizen of a foreign country who has lawfully been admitted for permanent residence in the United States; or

(ii) owned by a corporation (other than a corporation which is a citizen of the United States) lawfully organized and doing business under the laws of the United States or any State thereof so long as such aircraft is based and primarily used in the United States; and

(B) it is not registered under the law of any foreign country; or

(2) it is an aircraft of the Federal Government, or of a State, territory, or possession of the United States or the District of Columbia or a political subdivision thereof.

For purposes of this subsection, the Secretary of Transportation shall, by regulation, define the term "based and primarily used in the United States".

ISSUANCE OF CERTIFICATE

(c) Upon request of the owner of any aircraft eligible for registration, such aircraft shall be registered by the Administrator and the Administrator shall issue to the owner thereof a certificate of registration.

APPLICATIONS

(d) Applications for such certificates shall be in such form, be filed in such manner, and contain such information as the Administrator may require.

SUSPENSION OR REVOCATION

(e) *(1)* Any such certificate may be suspended or revoked by the Administrator for any cause which renders the aircraft ineligible for registration.

(2)(A) The Administrator shall issue an order revoking the certificate of registration issued to an owner under this section for an aircraft and each other certificate of registration held by such owner under this section, if the Administrator determines that—

(i) such aircraft has been used to transport a controlled substance, which such transportation is prohibited by any State or Federal law or is provided in connection with any act prohibited by any State or Federal law relating to controlled substances (other than any law relating to simple possession of a controlled substance); and

(ii) the use of the aircraft was permitted by such owner with the knowledge that the aircraft was intended to be used for transportation described in clause (i) of this subparagraph.

For purposes of this paragraph, an owner of an aircraft who is not an individual shall be considered to have knowledge of an intended use of an aircraft only if a majority of the individuals who control such owner or who are involved in forming the major policy of such owner have knowledge of such intended use. Before issuing an order revoking a certificate under this paragraph, the Administrator shall provide the holder of such certificate with notice and an opportunity for a hearing on the record. Any person whose certificate is revoked under this paragraph may obtain judicial review of such order under the provisions of section 1006. For purposes of this paragraph the term "controlled substance" has the meaning given such term by section 102(6) of the Controlled Substances Act.

(B) Except as provided in subparagraph (C), the Administrator shall not issue a certificate of registration to any person who has had a certificate revoked pursuant to subparagraph (A) of this paragraph during the five-year period beginning on the date of such revocation.

(C) The Administrator may issue a certificate of registration for an aircraft to any such person before the end of such five-year period (but not before the end of the one-year period beginning on the date of such revocation) if the Administrator determines that such aircraft is otherwise eligible for registration under this section and (i) that revocation of the certificate for such five-year period would be excessive considering the nature of the offense or the act

committed and the burden which revocation places on such person, or (ii) that revocation of the certificate for such five-year period would not be in the public interest. The determinations under clauses (i) and (ii) of the preceding sentence shall be within the discretion of the Administrator and any such determination or failure to make such a determination shall not be subject to administrative or judicial review.

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TITLE VI—SAFETY REGULATION OF CIVIL AERONAUTICS

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AIRMAN CERTIFICATES

POWER TO ISSUE CERTIFICATE

SEC. 602. (a) The Administrator is empowered to issue airman certificates specifying the capacity in which the holders thereof are authorized to serve as airmen in connection with aircraft.

ISSUANCE OF CERTIFICATE

(b) *(1)* Any person may file with the Administrator an application for an airman certificate. If the Administrator finds, after investigation, that such person possesses proper qualifications for, and is physically able to perform duties pertaining to, the position for which the airman certificate is sought, he shall issue such certificate, containing such terms, conditions, and limitations as to duration thereof, periodic or special examinations, tests of physical fitness, and other matters as the Administrator may determine to be necessary to assure safety in air commerce. Except in the case of persons whose certificates are, at the time of denial, under order of suspension or whose certificates have been revoked within one year of the date of such denial, any person whose application for the issuance or renewal of an airman certificate is denied may file with the Board a petition for review of the Administrator's action. The Board shall thereupon assign such petition for hearing at a place convenient to the applicant's place of residence or employment. In the conduct of such hearing and in determining whether the airman meets the pertinent rules, regulations, or standards, the Board shall not be bound by findings of fact of the Administrator. At the conclusion of such hearing, the Board shall issue its decision as to whether the airman meets the pertinent rules, regulations, and standards and the Administrator shall be bound by such decision: *Provided,* That the Administrator may, in his discretion, prohibit or restrict the issuance of airman certificates to aliens, or may make such issuance dependent on the terms of reciprocal agreements entered into with foreign governments.

(2)(A) Except as provided in subparagraph (B), the Administrator shall not issue an airman certificate to any person whose airman certificate has been revoked pursuant to subsection (c) of section 609 of this title during the five-year period beginning on the date of such revocation.

(B) The Administrator may issue an airman certificate to any such person before the end of such five-year period (but not before the end of the one-year period beginning on the date of such revocation) if, in addition to the findings required by paragraph (1), the Administrator determines (i) that revocation of the certificate for such five-year period would be excessive considering the nature of the offense or the act committed and the burden which revocation places on such persons, or (ii) that revocation of the certificate for such five-year perioid would not be in the public interest. The determination under clauses (i) and (ii) of the proceding sentence shall be within the discretion of the Administrator and any such determination or failrue to make such a determination shall not be subject to administrative or judicial review.

(C) In any case in which the Administrator has revoked the airman certificates of a person under section 609(c)(2) as a result of any activity and such person is subsequently acquitted of all charges contained in an indictment or information which relate to controlled substance and which arise from such activity, the Administrator shall issue an airman certificate to such person if such person is otherwise qualified to serve as an airman under this section.

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AMENDMENT, SUSPENSION, AND REVOCATION OF CERTIFICATES

PROCEDURE

SEC. 609. (a) * * *

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TRANSPORTATION OF CONTROLLED SUBSTANCES

(c)(1) The Administrator shall issue an order revoking the airman certificates of any person upon conviction of such person, and exhaustion of all direct judicial review of such conviction, for violation of any State or Federal law relating to a controlled substance (other than any law relating to simple possession of a controlled substance) if the Administrator determines that (A) an aircraft was used in the commission of the offense, and (B) such person served as an airman in connection with the offense or was on board the aircraft in connection with the offense. The Administrator shall have no authority under this paragraph to review the issue of whether an airman violated any State or Federal law relating to a controlled substance. Before issuing an order revoking a certificate under this paragraph, the Administrator shall provide the holder of such certificate with notice and an opportunity for a hearing on the record. The person whose certificate is revoked by the Administrator's order may obtain judicial review of such order under the provisions of section 1006.

(2) The Administrator shall issue an order revoking the airman certificates of any person if the Administrator determines that (A) such person has knowingly engaged in an activity which is prohibited by any State or Federal law relating to a controlled substance (other than any law relating to simple possession of a controlled substance), (B) an aircraft was used in carrying out such activity,

and (C) such person served as an airman in connection with such activity or was on board the aircraft in connection with such activity. The Administrator shall have no authority to revoke a certificate under this paragraph on the basis of any activity if the holder of the certificate is acquitted of all charges contained in an indictment or information which related to controlled substances and which arise from such activity. Before issuing an order revoking a certificate under this paragraph, the Administrator shall provide the holder of such certificate with notice and an opportunity for a hearing on the record. The person whose certificate is revoked by the Administrator's order may obtain judicial review of such order under the provisions of section 1006.

(3) For purposes of this subsection, the term "controlled substance" has the meaning given such term by section 102(6) of the Controlled Substances Act.

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TITLE IX—PENALTIES

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CRIMINAL PENALTIES

GENERAL

SEC. 902. (a) Any person who knowingly and willfully violates any provision of this Act (except titles III, V, VI, III, and XII), or any order, rule, or regulation issued by the Administrator or by the Board under any such provision or any term, condition, or limitation of any certificate or permit issued under title IV, for which no penalty is otherwise provided in this section or in section 904, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject for the first offense to fine of not more than $500, and for any subsequent offense to a fine of not more than $2,000. If such violation is a continuing one, each day of such violation shall constitute a separate offense.

FORGERY OF CERTIFICATES AND FALSE MARKING OF AIRCRAFT

[(b) Any person who] *(b)(1) Except as provided in paragraph (2), any person who* knowingly and willfully forges, counterfeits, alters, or falsely makes any certificate authorized to be issued under this Act, or knowingly [uses or attempts to use] *sells, uses, attempts to use, or possesses with the intent to use* any such fraudulent certificate, and any person who knowlingly and willfully displays or causes to be displayed on any aircrarft, any marks that are false or misleading as to the nationality or registration of the aircraft, shall be subject to a fine of not exceeding $1,000 or to imprisonment not exceeding three years, or to both such fine and imprisonment.

(2)(A) any person who violates paragraph (1) of this subsection (other than by selling a fraudulent certificate) with the intent to commit any act prohibited by any State or Federal law relating to controlled substances (other than any law relating to simple possession of a controlled substance) shall be subject to a fine not exceeding $25,000 or to imprisonment not exceeding five years, or both.

(B) Any person who violates paragraph (1) of this subsection by selling a fraudulent certificate with the knowledge that the purchaser intends to use such certificate in connection with any act prohibited by any State or Federal law relating to controlled substances (other than any law relating to simple possession of a controlled substance) shall be subject to a fine not exceeding $25,000 or to imprisonment not exceeding five years, or both.

(C) For purposes of this paragraph, the term "controlled substance" has the meaning given such term by section 102(6) of the Controlled Substances Act.

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TRANSPORTING CONTROLLED SUBSTANCES WITHOUT AIRMAN CERTIFICATE

(q) Any person who knowingly and willfully violates section 610(a)(2) in connection with the transportation by aircraft of any controlled substance, where (1) such transportation is prohibited by any State or Federal law or is provided in connection with any act prohibited by any State or Federal law relating to controlled substances (other than any law relating to simple possession of a controlled substance), and (2) such person has knowledge of such transportation, shall be subject to a fine not exceeding $25,000 or to imprisonment not exceeding five years, or to both such fine and imprisonment. For purposes of this subsection, the term "controlled substance" has the meaning given such term by section 102(6) of the Controlled Substances Act.

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